

No. 47037-3-II

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IN THE WASHINGTON STATE COURT OF APPEALS  
DIVISION II

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In the Parenting and Support of:

K.J.W., Child

GLENDRA RAE TOMES, Respondent

vs.

DONALD RANDY WALLACE,

Appellant.

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APPEAL FROM THE SUPERIOR COURT

OF LEWIS COUNTY

Cause No. 12-3-00305-1

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REPLY BRIEF OF APPELLANT

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## **I. STATEMENT OF THE CASE**

The appellant adopts the statement of the case as set forth in his opening brief.

## **II. ARGUMENT**

### **A. *The CR 60(b) motion should have been granted.***

Rather than initiating the underlying case under the correct statute (RCW 26.12.010), Ms. Tomes commenced this case under RCW 26.26. RCW 26.26 is the Uniform Parentage Act. It applies to the determination of parentage in the state – giving jurisdiction to the superior courts to adjudicate such actions. RCW 26.26.031. As shown, parentage was never at issue here. Respondent argues that RCW 26.26 was the “correct law” and that “any disagreement about the law should have been addressed at trial.” Such arguments fail because the point is that Ms. Tomes misrepresented her position to the trial court and perhaps more importantly, the trial court was simply without jurisdiction to adjudicate the action as initiated.

In Marley v. Dept. of Labor and Industries, 125 Wn.2d 533, 886 P.2d 189 (1994) the petitioner sought to void an administrative order because the tribunal lacked personal and subject matter jurisdiction. While the Court ultimately ruled against Ms. Marley, it did so only after concluding that “a void judgment exists whenever the issuing court lacks personal jurisdiction over the party or subject matter jurisdiction over the claim.” *Id.* at 539. Because Ms. Marley did not raise the issue of personal jurisdiction, the Court analyzed subject matter jurisdiction only, holding that “[a] judgment may properly be rendered against a party only if

the court has authority to adjudicate the type of controversy involved in the action.” *Id.* (*citing* Restatement (Second) of Judgments §§ 1, 11 (1982)).

Here, as has been shown, the trial court simply did not have subject matter jurisdiction to adjudicate this claim. The matter was commenced under the parentage statute but should have been commenced under RCW 26.12 and thereby held in Family Court. Where it was not, and where Ms. Tomes misrepresented the applicable law to the tribunal, relief under CR 60(b) should have been granted.

Respondent apparently admits that she misrepresented to the court her lack of knowledge regarding “any other legal proceedings” concerning K.J.W where she alleges that such misrepresentations were “alleviated at trial by her testimony.” BOR at 8. Respondent’s argument, in other words, is essentially an admission that she was untruthful in her petition – which was signed under penalty of perjury – and then truthful during trial. This Court should reject such a response.

Similarly, Respondent argues that because she was not a “party” to the criminal litigation surrounding KJW that she was truthful when she signed under penalty of perjury that she had not “been involved” in any other proceeding concerning KJW. She also alleges that because she was not a party in the case that she was truthful when she stated she did not know of any other legal proceedings concerning the child. Respectfully, first, not being a party and not being “aware” of legal proceedings are two totally different positions. In fact, much of Ms. Tomes’ position at trial centered on KJW’s criminal issues and she frequently

cited her involvement in helping KJW cooperate with his SSOSA sentence as grounds to favor her over Mr. Wallace. Where respondent clearly had “been involved” in and “was aware” of KJW’s criminal case, she was untruthful in her representations to the trial court.

As it relates to the incomplete child support worksheets, RCW 26.19.035(3), very clearly states that the Court should not accept incomplete worksheets. There is no section known to Mr. Wallace or cited by respondent that allows for later supplementation, or for blanks to be “filled in” by trial testimony. Respondent’s argument is therefore untenable given the clear language of the statute.

As this Court is aware, statutory interpretation is a question of law reviewed de novo. Port of Seattle v. Pollution Control Hearings Bd., 151 Wn.2d 568, 593, 90 P.3d 659 (2004). Appellate courts interpret statutes to effectuate legislative intent. Cherry v. Mun. of Metro. Seattle, 116 Wn.2d 794, 799, 808 P.2d 746 (1991). In determining legislative intent, the Court should first look to the language of the statute. Lacey Nursing Ctr., Inc. v. Dep’t of Revenue, 128 WN.2d 40, 53, 905 P.2d 338 (1995). Reliance on extrinsic evidence such as records of lawmakers’ “intent” is proper for the limited purpose of illustrating and confirming meaning, but should never be used to narrow or enlarge obvious textual limitations. 1 Joseph Story, Commentaries on the Constitution of the United States, 384 (1991). “Where statutory language is plain and unambiguous, courts will not construe the statute but will glean the legislative intent from the words of the statute itself ....” Agrilink Foods, Inc. v. Dep’t of Revenue, 153

WN.2d 392, 396, 103 P.3d. 1226 (2005). As shown, the language of RCW 26.19.035(3) is clear and unambiguous. The trial court should not have accepted the incomplete worksheets.

*B. It was an abuse of authority when the trial court imposed sanctions against Mr. Wallace and his attorney.*

As has been shown, there were numerous irregularities and clear bias in favor of Ms. Tomes in this case. That bias continued with the award of sanctions against Mr. Wallace and his attorney for filing the CR 60(b) motion. At no point in her declaration response to Mr. Wallace's motion did Ms. Tomes articulate how the CR 60(b) motion was not grounded in fact or law or was brought for an improper purpose. As has been show, there were jurisdictional questions as well as very real concerns about the trial court's ability to interpret clear statutes. Those issues, in addition to the misrepresentations of respondent surely warranted review. Further, common sense would suggest Mr. Wallace simply wanted the trial court to reconsider its ruling granting Ms. Tomes custody of KJW. Surely this Court recognizes the heartbreak associated with custody actions and given the trial court's bias against Mr. Wallace, surely he had the right to raise these issues without being sanctioned. Where the issues raised were well-grounded in law and fact, the trial court should not have sanctioned Mr. Wallace and his attorney.

*C. This Court should not impose appellate attorney's fees.*

Respondent is seeking appellate attorney's fees. This court should, respectfully, decline to impose fees for the following reasons.

First, as shown above, the trial court abused its discretion in both denying the CR 60(b) motion and imposing CR 11 sanctions. There were numerous

irregularities and misrepresentations in this case – as well as questions regarding the subject matter jurisdiction of the tribunal and the court’s interpretation of RCW 26.19.035(3). Even if this Court ultimately affirms the denial of the motion, there is little doubt the issues raised were well-grounded in law and fact.

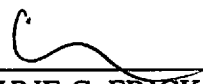
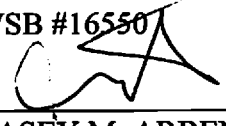
Second, the issues raised in this appeal are equally well-grounded in law and fact. As shown, respondent admits making misrepresentations that were later “cleared up” in her trial testimony and she admits her worksheets were incomplete. Surely Mr. Wallace should not bear the cost of paying for respondent’s attorney’s fees where she makes such concessions. Additionally, as shown above, where Mr. Wallace has raised serious concerns about subject matter jurisdiction, as well as statutory interpretation, his arguments have merit, even if this Court ultimately declines to grant him the relief requested.

### **III. CONCLUSION**

For these reasons, as well as those set forth in his opening brief, Mr. Wallace respectfully requests that this Court reverse the trial court’s denial of his CR 60(b) motion and the imposition of attorney’s fees.

RESPECTFULLY SUBMITTED this 9th day of October, 2015.

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## CERTIFICATE OF SERVICE

Lee Ann Mathews, hereby certifies under penalty of perjury under the laws of the State of Washington, that on the day set out below, I delivered true and correct copies of the reply brief of appellant to which this certificate is attached, by United States Mail or ABC-Legal Messengers, Inc., to the following:

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Signed at Tacoma, Washington, this 9<sup>th</sup> day of October, 2015.

  
LEE ANN MATHEWS

## HESTER LAW OFFICES

**October 09, 2015 - 1:08 PM**

### Transmittal Letter

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### Comments:

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